

## INTERFERENCE INITIAL MEMORANDUM

Count # \_\_\_\_\_

BOARD OF PATENT APPEALS AND INTERFERENCES: An interference is found to exist between the following cases

This interference involves \_\_\_\_\_ parties

104639

PARTY	SERIAL NO.	FILING DATE	PATENT NO., IF ANY	ISSUE DATE, IF ANY
TRINCHIERI ET AL.	08/956,240	10/22/97	5,811,523	9/22/98
If application has been patented, have maintenance fees been paid? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Maintenance fees not due yet				

\*\*Accorded the benefit of:

COUNTRY	SERIAL NO.	FILING DATE	PATENT NO., IF ANY	ISSUE DATE, IF ANY
U.S.	08/858000	5/16/97	—	—
U.S.	08/403,013	3/13/95	5,648,467	7/15/97
U.S.	08/584,941	9/18/90	5,457,038	10/10/95
U.S.	07/307,817	2/7/89	—	—

The claim(s) of this party which correspond(s) to this count is(are):

PATENTABLE CLAIMS

1-7

UNPATENTABLE CLAIMS

NONE

The claim(s) of this party which does(do) not correspond to this count is(are):

PATENTABLE CLAIMS

NONE

UNPATENTABLE CLAIMS

NONE

PARTY	SERIAL NO.	FILING DATE	PATENT NO., IF ANY	ISSUE DATE, IF ANY
GATELY ET AL.	09/401,839	9/22/99	—	—
If application has been patented, have maintenance fees been paid? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Maintenance fees not due yet				

\*\*Accorded the benefit of:

COUNTRY	SERIAL NO.	FILING DATE	PATENT NO., IF ANY	ISSUE DATE, IF ANY
U.S.	08/459,151	6/2/95	—	—
U.S.	08/205,011	3/2/94	—	—
U.S.	07/857,023	3/24/92	—	—
U.S.	07/572,284	8/27/90	—	—

The claim(s) of this party which correspond(s) to this count is(are):

PATENTABLE CLAIMS

33-38

UNPATENTABLE CLAIMS

NONE

The claim(s) of this party which does(do) not correspond to this count is(are):

PATENTABLE CLAIMS

NONE

UNPATENTABLE CLAIMS

NONE

## Instructions

1. For every patent involved in the interference, check if the fees have been paid by using the patent number with the PALM screen CR06. If fees are due and they have not been paid, the interference cannot be declared since it would involve an expired patent. (35 USC 135(a); 37 CFR 1.606).
2. For each party, separately identify the patentable and unpatentable claims which correspond to the count. (37 CFR 1.601 (f), 1.601 (n), 1.609(b)(2)).
3. For each party, separately identify the patentable and unpatentable claims which do not correspond to the count (37 CFR 1.609(b)(3)).
4. Forward all files including those the benefit of which is being accorded.
5. Keep a copy of the Interference Initial Memorandum and any attachments for your records.

All information requested below must be attached on (a) separate sheet(s) and type-written.

6. On a separate sheet, set forth a single proposed interference count. If any claim of any party is exactly the same word for word as this count, please indicate the party, application or patent number, and the claim number.
7. For each claim designated as corresponding to the count, provide an explanation of why each claim defines the same patentable invention (37 CFR 1.609(b)(2)).
8. For each claim designated as not corresponding to the count, provide an explanation of why each claim defines a separate patentable invention (37 CFR 1.609(b)(3)).
9. For each additional count, if any, repeat steps 2-6 and, additionally, provide an explanation why each count represents a separate patentable invention from every other count (37 CFR 1.609(b)(1)).

DATE 10/5/00	PRIMARY EXAMINER (Signature) PREMA MERTZ	TELEPHONE NO. 703-308-4229	ART UNIT 1646
DATE	GROUP DIRECTOR SIGNATURE (if required)		

\*\*The serial number and filing date of each application the benefit of which is intended to be accorded must be listed. It is not sufficient to merely list the earliest application if there are intervening applications necessary for continuity.

THIS PAGE CAN BE DUPLICATED IF THERE ARE MORE THAN TWO INTERFERING PARTIES.

## INTERFERENCE INITIAL MEMORANDUM

Count # \_\_\_\_\_

BOARD OF PATENT APPEALS AND INTERFERENCES: An interference is found to exist between the following cases:

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PARTY	SERIAL NO.	FILING DATE	PATENT NO., IF ANY	ISSUE DATE, IF ANY
TRINCHIERI ET AL.	08/956,240	10/22/97	5,811,523	9/22/98

If application has been patented, have maintenance fees been paid? ☐ Yes ☐ No ☐ Maintenance fees not due yet

COUNTRY	SERIAL NO.	FILING DATE	PATENT NO., IF ANY	ISSUE DATE, IF ANY
U.S.	07/269,945	11/10/88	—	—

The claim(s) of this party which correspond(s) to this count is(are):

PATENTABLE CLAIMS 1-7	UNPATENTABLE CLAIMS NONE
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The claim(s) of this party which does(do) not correspond to this count is(are):

PATENTABLE CLAIMS NONE	UNPATENTABLE CLAIMS NONE
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PARTY	SERIAL NO.	FILING DATE	PATENT NO., IF ANY	ISSUE DATE, IF ANY
GATELY ET AL.	09/401,839	9/22/99	—	—

If application has been patented, have maintenance fees been paid? ☐ Yes ☐ No ☐ Maintenance fees not due yet

COUNTRY	SERIAL NO.	FILING DATE	PATENT NO., IF ANY	ISSUE DATE, IF ANY
U.S.	07/520,935	5/9/90	—	—
U.S.	07/455,708	12/22/89	—	—

The claim(s) of this party which correspond(s) to this count is(are):

PATENTABLE CLAIMS 33-38	UNPATENTABLE CLAIMS NONE
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The claim(s) of this party which does(do) not correspond to this count is(are):

PATENTABLE CLAIMS NONE	UNPATENTABLE CLAIMS NONE
---------------------------	-----------------------------

## Instructions

1. For every patent involved in the interference, check if the fees have been paid by using the patent number with the PALM screen CR06. If fees are due and they have not been paid, the interference cannot be declared since it would involve an expired patent. (35 USC 135(a); 37 CFR 1.606).
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9. For each additional count, if any, repeat steps 2-6 and, additionally, provide an explanation why each count represents a separate patentable invention from every other count (37 CFR 1.609(b)(1)).

DATE 10/5/00	PRIMARY EXAMINER (Signature) Prerna Mehta	TELEPHONE NO. 703-308-4229	ART UNIT 1646
DATE	GROUP DIRECTOR SIGNATURE (if required)		

\*\*\*The serial number and filing date of each application the benefit of which is intended to be accorded must be listed. It is not sufficient to merely list the earliest application if there are intervening applications necessary for continuity.

THIS PAGE CAN BE DUPLICATED IF THERE ARE MORE THAN TWO INTERFERING PARTIES.

Interference # \_\_\_\_\_

### **STATEMENT UNDER 37 CAR 1.609(b)**

The portions of 37 CAR 1.609(b) relevant to the preparation of these interference papers are (1) the proposed counts; (2) the claims corresponding to each count; (3) an explanation of why each claim designated is directed to the same patentable invention as the count; and (4) sufficient information to identify the earlier application to which applicant is entitled benefit of the filing date.

### **PROPOSED INTERFERENCE COUNT**

"An antibody which specifically reacts with natural killer cell stimulatory factor, said factor comprising a first subunit comprising the amino acid sequence set forth in Figure 1 and a second subunit comprising the amino acid sequence set forth in Figure 2". The count encompasses the subject matter of claims 1-7 of U.S. Patent No. 5,811,523 which corresponds to claims 33-38 of Application Serial No. 09/401,839.

The polypeptide identified as natural killer cell stimulatory factor (NKSF) in U.S. Patent No. 5,811,523 ('523) is the same polypeptide identified as cytotoxic lymphocyte maturation factor (CLMF) in Application No. 09/401,839 ('839).

### **CLAIMS CORRESPONDING TO THE COUNT AND EXPLANATIONS**

It is noted that there is one application (09/401,839) and one U.S. Patent (U.S. Patent No. 5,811,523) corresponding to the count, and 2 inventive entities.

Claims 1-7 of U.S. Patent No. 5,811,523 and claims 33-38 of Application No. 09/401,839 correspond to the count for the following reasons:

**Trinchieri et al., U.S. Patent No. 5,811,523:**

Claims 1-7 have issued.

Claims 1-7 of Trinchieri et al. ('523) corresponds to the count as they recite an antibody which can be raised in murine or human subjects, said antibody specifically reacts with natural killer cell stimulatory factor (NKSF) protein, said protein capable of inducing the production of gamma interferon in vitro in human peripheral blood lymphocytes (PBL) said protein comprising a first subunit comprising the amino acid sequence set forth in Figure 1 and a second subunit comprising the amino acid sequence set forth in Figure 2, as recited in the count. The activity of inducing the production of gamma interferon in vitro in human peripheral blood lymphocytes of the polypeptide recited in claim 1 would be an inherent biological property of the polypeptide which specifically reacts with the antibodies recited in the count. The text of column 10, lines 25-28 indicate that monoclonal antibodies were considered to be part of the claimed invention.

**APPLICATION TO WHICH APPLICANT IS ENTITLED BENEFIT OF THE FILING DATE.**

All the claims of Trinchieri et al. ('523) are entitled benefit of priority document Serial No:07/269,945, filed 11/10/88.

**Gately et al., Application No. 09/401,839:**

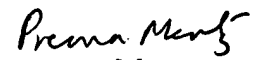
Claims 33-38 are pending and allowed.

Claims 33-38 of Gately et al. ('839) corresponds to the count as they recite a monoclonal antibody that specifically reacts with cytotoxic lymphocyte maturation factor (CLMF) protein, said protein comprising a first subunit comprising the amino acid sequence set forth in Figure 25A-25D

and a second subunit comprising the amino acid sequence set forth in Figure 26A-26C of claim 33 as recited in the count. The induction of proliferation of phytohemagglutinin (PHA)-activated peripheral blood lymphocytes activity of the polypeptide recited in claim 34 would be an inherent biological property of the polypeptide recited in the count. Claims 33-38 explicitly recite monoclonal antibody which falls within the metes and bounds of the proposed count because a monoclonal antibody is a murine antibody.

**APPLICATION TO WHICH APPLICANT IS ENTITLED BENEFIT OF THE FILING  
DATE.**

All of the claims of Gately et al. ('839) are entitled benefit of priority document Serial No:07/455,708, filed 12/22/89.

  
Prema Mertz  
Primary Examiner  
Art Unit 1646  
October 5, 2000